Selangor State Government & Anor v Kuala Lumpur Kepong Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01(A)-193–05 OF 2016
TENGKU MAIMUN, ABDUL RAHMAN SEBLI AND KAMARDIN HASHIM JJCA
6 APRIL 2017

Administrative Law — Judicial review — Certiorari — High Court quashed state authority's acquisition of part of respondent's scheduled land to expand existing landfill — Court held that at time of acquisition land could not be used for landfill without breaching the Environmental Quality Act 1974 and prevailing condition of use of land — Extension of landfill on scheduled land part of local authority's development plan — Whether acquisition complied with provisions of the Land Acquisition Act 1960 ('the LAA 1960') — Whether the LAA 1960 did not require compliance with other laws before acquisition of land could be validly done — Whether decision to acquire land did not suffer from illegality, irrationality or procedural impropriety — Whether state authority's decision to compulsorily acquire land instead of leasing it from owner could not be ground to set aside the acquisition — Whether state authority's decision to compulsorily acquire land instead of leasing it from owner could not be ground to set aside acquisition

The respondent owned two adjoining pieces of land, one of which ('the scheduled land') was held under agricultural title but zoned partly for 'infrastructure and utilities' use and partly for agricultural use. Pursuant to the Rancangan Tempatan Majlis Daerah Kuala Selangor 2025, part of the scheduled land and the adjoining land was to be zoned for industrial land use. In keeping with that local authority plan, the state authority compulsorily acquired part of the scheduled land and the adjoining land under the Land Acquisition Act 1960 ('the LAA 1960') for the purpose of extending an existing landfill. The respondent objected and applied to quash the acquisition by way of a judicial review application in the High Court. In support of its application, the respondent contended that: (a) the state authority had failed to issue Form A as required by s 4 of the LAA 1960; (b) the purpose for which the scheduled land was acquired contravened the designated zoning of the land as well as the Environmental Quality Act 1974 ('the EQA'); and (c) the decision to acquire the land for a landfill for a period of ten to 15 years was irrational and unreasonable as, pursuant to s 57 of the LAA 1960, the state authority could have leased the scheduled land from the applicant rather than compulsorily acquiring it. The High Court rejected ground (i) but agreed with the other grounds and quashed the acquisition. In the instant appeal against that decision, the appellants contended that the High Court should not have

allowed the judicial review application because: (i) the acquisition was properly done in accordance with the LAA 1960 and it was not dependent on either the zoning of the scheduled land or the EQA; that, in any case, matters concerning the zoning and environmental quality had been complied with; and (ii) s 57 of the LAA 1960 gave the state authority discretion to either lease or compulsorily acquire any land and the non-invocation of s 57 in the instant case could not be a ground for quashing the acquisition of the land.

Held, allowing the appeal:

(1) The High Court erred in holding that the acquisition of the land was invalid. The challenge to the acquisition of the scheduled land on the ground of illegality or 'contrary to law' had to be confined to the law as provided under the LAA 1960. In the instant appeal, except for the ground that the appellants had failed to issue Form A (which ground was rejected by the High Court), the respondent raised no other ground with regard to the LAA 1960 itself (see paras 31–33).

(2) The decision-making for the acquisition of the scheduled land did not suffer from illegality, irrationality or procedural impropriety which warranted judicial review by the High Court. Although the landfill would fall under the industrial zone, there was no illegality in the decision to acquire the scheduled land for the purpose of expanding the landfill, which was already in existence, and which purpose was in accordance with the Rancangan Tempatan Majlis Daerah Kuala Selangor 2025. The decision to acquire the scheduled land did not suffer from irrationality either. It could not be said that the respondents' decision to acquire the scheduled land was so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided would have arrived at the decision (see paras 27 & 37–38).

(3) As for the requirements under the EQA, the court agreed with the appellants that the requirements would be relevant at the implementation stage whereas the decision to acquire and the acquisition itself was a policy matter. There was nothing in the LAA 1960 that required compliance with other laws before the acquisition of the land could be validly done (see paras 28–29).

(4) Section 57 of the LAA 1960 merely provided the state authority with the discretion or an option to occupy or use the land without resort to compulsory acquisition. As the discretion or option lay with the state authority, its failure to invoke that provision in respect of the scheduled land could not be a ground to quash the acquisition. In any event, s 57 would be applicable for occupation or usage of land not exceeding three years, whereas in the instant appeal the landfill would be operational for nine to ten years (see para 36).

[Bahasa Malaysia summary

Responden memiliki dua bidang tanah yang bersebelahan satu sama lain, satu daripadanya ('tanah terjadual') dipegang bawah hakmilik pertanian tetapi sebahagiannya dizonkan untuk kegunaan 'infrastruktur dan utiliti' manakala sebahagian lagi untuk kegunaan pertanian. Selaras dengan Rancangan Tempatan Majlis Daerah Kuala Selangor 2025, sebahagian daripada tanah terjadual dan tanah bersebelahan tersebut akan dizonkan untuk kegunaan tanah perindustrian. Selari dengan rancangan pihak berkuasa tempatan, pihak berkuasa negeri memperoleh secara wajib sebahagian daripada tanah terjadual dan tanah bersebelahan bawah Akta Pengambilan Tanah 1960 ('APT 1960') bagi tujuan melanjutkan tapak pelupusan sedia ada. Responden membantah dan memohon untuk membatalkan pengambilan tersebut melalui satu permohonan semakan kehakiman di Mahkamah Tinggi. Bagi menyokong permohonannya, responden menghujahkan: (a) pihak berkuasa negeri gagal mengeluarkan Borang A sebagaimana yang dikehendaki oleh s 4 APT 1960; (b) tujuan tanah terjadual diambil melanggar pengezonan tanah yang ditetapkan dan Akta Kualiti Alam Sekeliling 1974 ('AKAS'); dan (c) keputusan mengambil tanah untuk tapak pelupusan untuk tempoh sepuluh hingga 15 tahun tidak rasional dan tidak munasabah kerana, menurut s 57 APT 1960, kerajaan negeri boleh memajak tanah terjadual daripada pemohon dan bukannya wajib mengambilnya. Mahkamah Tinggi menolak hujahan (i) tersebut tetapi bersetuju dengan alasan-alasan lain dan membatalkan pengambilan tanah. Dalam rayuan terhadap keputusan tersebut, perayu menghujahkan Mahkamah Tinggi tidak sepatutnya membenarkan permohonan semakan kehakiman kerana: (i) pengambilan dilakukan dengan betul mengikut APT 1960 dan tidak bergantung pada sama ada pengezonan tanah terjadual atau AKAS; bahawa, dalam apa-apa hal, perkara yang berkaitan dengan zon dan kualiti alam sekitar telah dipatuhi; (ii) s 57 APT 1960 memberi budi bicara kepada pihak berkuasa negeri untuk sama ada memajak atau mengambil mana-mana tanah secara wajib dan kegagalan membangkitkan s 57 dalam kes ini tidak boleh dijadikan alasan untuk membatalkan pengambilan tanah.

Diputuskan, membenarkan rayuan:

(1) Mahkamah Tinggi terkhilaf dalam memutuskan bahawa pengambilan tanah tersebut tidak sah. Cabaran terhadap pengambilan tanah terjadual atas alasan menyalahi undang-undang atau 'bertentangan dengan undang-undang' perlu dihadkan oleh undang-undang sebagaimana yang diperuntukkan bawah APT 1960. Dalam rayuan ini, kecuali alasan bahawa perayu-perayu gagal mengeluarkan Borang A (yang ditolak oleh Mahkamah Tinggi), responden tidak membangkitkan apa-apa alasan lain tentang APT 1960 (lihat perenggan 31–33).

(2) Keputusan mengambil tanah terjadual bukanlah menyalahi

undang-undang, tidak rasional atau gagal mematuhi prosedur hingga mewajarkan semakan kehakiman oleh Mahkamah Tinggi. Walaupun tapak pelupusan tersebut terjumlah bawah zon industri, keputusan untuk memperoleh tanah terjadual bagi maksud memperluaskan tapak pelupusan tidak menyalahi undang-undang, yang sudah wujud serta tujuannya selaras dengan Rancangan Tempatan Majlis Daerah Kuala Selangor 2025. Keputusan untuk mengambil tanah terjadual juga bukanlah tidak rasional. Tidak boleh dikatakan bahawa keputusan responden untuk mengambil tanah terjadual tersebut sangat keterlaluan dan tiada alasan logik atau standard moral munasabah hinggakan tiada orang yang waras yang mengarahkan mindanya pada soalan yang perlu diputuskan akan membuat keputusan sebegitu (lihat perenggan 27 & 37–38).

(3) Bagi keperluan bawah EQA, mahkamah bersetuju dengan perayu bahawa keperluan hanya relevan di peringkat pelaksanaan manakala keputusan untuk mengambil dan pengambilan itu sendiri adalah satu hal perkara dasar. Tiada apa-apa dalam APT 1960 mengkehendaki pematuhan undang-undang lain sebelum pengambilan tanah boleh dilakukan secara sah (lihat perenggan 28–29).

(4) Seksyen 57 APT 1960 hanya memperuntukkan pihak berkuasa negeri dengan budi bicara atau pilihan untuk menduduki atau menggunakan tanah tanpa mengambil alih secara paksa. Oleh kerana budi bicara atau pilihan terletak pada pihak berkuasa negeri, kegagalan mengguna pakai peruntukan berkenaan dengan tanah terjadual tersebut tidak boleh dijadikan alasan untuk membatalkan pengambilan. Dalam apa jua keadaan, s 57 terguna pakai bagi pendudukan atau penggunaan tanah tidak melebihi tiga tahun, sedangkan dalam rayuan ini, tapak pelupusan akan beroperasi selama sembilan hingga sepuluh tahun (lihat perenggan 36).]

Notes

For cases on certiorari, see 1(1) *Mallal's Digest* (5th Ed, 2015) paras 384–405.

Cases referred to

Ahmad bin Saman v Kerajaan Negeri Kedah [2003] 4 MLJ 705; [2004] 1 CLJ 211, CA (refd)

Council of Civil Service Unions and others v Minister for the Civil Service [1985] AC 374, HL (refd)

Ee Chong Pang & Ors v The Land Administrator of the District of Alor Gajah & Anor [2013] 2 MLJ 16; [2013] 3 CLJ 649, CA (refd)

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee [1983] 2 MLJ 35, FC (refd)

Pentadbir Tanah Alor Gajah & Anor v Ee Chong Pang & Ors (No 01–13–06 of 2012(M) (unreported), FC (refd)

Legislation referred to

Environmental Quality Act 1974 ss 34A(2), 34B(1)
Land Acquisition Act 1960 ss 3(1)(a), 4, 8, 57, Form A
Town and Country Planning Act 1976

Appeal from: Application for Judicial Review No 25–20–06 of 2015 (High Court, Shah Alam)

Naziah bt Mokhtar (State Legal Advisor, Selangor State Legal Advisor Office) for the appellants.
Andrew Teh (Tan Chong Pei with him) (Wong Lu Peen & Tunku Alina) for the respondent.

Tengku Maimun JCA (delivering judgment of the court):

[1] This is an appeal by the State Government of Selangor and the Land Administrator of Daerah Kuala Selangor (the respondents in the court below) against the order of the High Court at Shah Alam in allowing Kuala Lumpur Kepong Bhd's (the applicant in the court below) application for judicial review.

[2] We heard the appeal and had unanimously allowed it. We now provide our reasons. For ease of reference, in this judgment, the parties will be referred to as they were in the High Court.

BACKGROUND FACTS

[3] The applicant was the registered proprietor of the land held under GRN 51664 Lot 1595, Mukim Jeram, Daerah Kuala Selangor (the scheduled land). The scheduled land is held under agricultural title but zoned partly as infrastructure and utilities and partly as agricultural. Pursuant to the *Rancangan Tempatan Majlis Daerah Kuala Selangor 2025*, part of the scheduled land and the applicant's adjoining land, Lot 1593 will be zoned for industrial land use.

[4] In 2006, part of the scheduled land and the applicant's adjoining land, namely Lots 2958 and 2959 were compulsorily acquired for purposes of constructing a sanitary landfill. Offer for compensations were made and accepted by the applicant.

[5] Vide *Gazette* No 935 dated 3 March 2015 and published on 12 March 2015 under s 8 of the Land Acquisition Act 1960 ('the LAA 1960'), the state authority decided under s 3(1)(a) of the LAA 1960 to acquire the applicant's land for public purpose viz:

permohonan pengambilan tanah di bawah seksyen 3(1)(a) dan pengisytiharan di bawah seksyen 8 Akta Pengambilan Tanah 1960 bagi tujuan Tapak Pelupusan Sampah di atas sebahagian Hakmilik GRN 51664 Lot 1595, Mukim Jeram, Daerah Kuala Selangor.

[6] The purpose, in particular was to expand the landfill mentioned in para 4 above.

PROCEEDINGS IN THE HIGH COURT

[7] The applicant objected to the acquisition and filed an application for judicial review on the following grounds:

(a) that the state authority's failure to issue Form A violates the statutory requirement of s 4 of the LAA 1960;

(b) that the purpose for which the scheduled land was acquired contravenes the designated zoning of the scheduled land;

(c) that the purpose of the acquisition contravenes the requirements under the Environmental Quality Act 1974 ('the EQA 1974'); and

(d) that the decision to acquire the land for purposes of a landfill for a period of ten to 15 years, was irrational and unreasonable as the state authority could have leased the scheduled land from the applicant instead of compulsorily acquiring it.

[8] The learned judge rejected the first ground but found favour with the other grounds canvassed by learned counsel for the applicant.

[9] In respect of zoning, the learned judge accepted the following submission of learned counsel:

(a) that the scheduled land is held under an agricultural title but zoned for infrastructures and utilities use;

(b) that under the regulations issued by the first respondent, any land being used as a waste disposal site or landfill must be zoned for 'heavy industry';

(c) that when the decision was made to compulsorily acquired the applicant's land, it could not have been used as a landfill simply because the usage of the land as a landfill would have breached the zoning regulations imposed by the first respondent;

(d) that the *gazetted* purpose of the acquisition, namely the landfill would have been, at the date of the *gazette*, an act that went against the law; and

(e) that the court cannot condone the actions of the state authority that breaches the zoning regulations that they themselves had set.

[10] The learned judge also agreed with learned counsel for the applicant on the issue of non-compliance with the EQA 1974 wherein learned counsel contended that the management of waste disposal is a 'prescribed activity' that is regulated by statute and that the use and operation of land, management, site location for waste disposal are administered and controlled by the Town and Country Planning Act 1976 and the EQA 1974.

[11] Learned counsel further submitted that a person who wishes to carry out the management of a waste disposal site must have licenses, approval and/or permits from the relevant authority to do so which includes:

(a) the environmental impact assessment reports;

(b) the evaluation of site fitness;

(c) the written approval for the construction of waste disposal site; and

(d) the issuance of licence for the use of waste disposal site.

[12] Learned counsel contended that during the decision-making process for the acquisition, the state authority failed to consider that the usage of the land would be in breach of the law as the necessary reports and studies have not been completed yet. In this regard, learned counsel highlighted the following chronology of events:

23 October 2014	Selangor State Executive Council's decision on land acquisition
20 April 2015	Department of Environment confirmed the terms of reference needed to be studied by project mover in the environmental impact assessment reports
18 November 2015	At the date of the affidavit in reply of the second respondent, it was stated that there is a study being conducted, which means the study and valuation that are needed have not been completed yet

[13] As for s 57 of the LAA 1960, the following submission of learned counsel for the applicant was accepted by the learned judge:

(a) a compulsory acquisition through the LAA 1960 resulted in the permanent loss of the applicant's ownership of the land;

(b) the applicant has a legitimate expectation that the state authority would undertake its responsibilities and obligations in respect of the land acquisition with care, caution and proper sense of responsibility;

(c) the applicant was informed that the acquired land will operate as a landfill for a period of seven years and thereafter, the landfill operator will close the site and convert it into a park; and

(d) the consultants engaged by the first respondent confirmed that the acquired land will be used as a landfill for nine to ten years after 2017.

[14] The applicant further contended that due to the relatively short period of time to fulfil the use of the land, the state authority ought to consider s 57 where pursuant thereto, the state authority can instruct the land administrator to procure the occupation or use of the land for nine years or more. This alternative option would benefit the applicant as it will not lose its ownership of the land.

[15] The learned trial judge agreed with learned counsel that if the first respondent had intended to use the land as a landfill, they could have leased the land for a short term ie for ten to 15 years under s 57 of the LAA 1960 without compulsorily acquiring the land.

[16] The applicant's application for judicial review was thus allowed, hence the appeal by the respondents.

THE APPEAL

[17] Before us, learned assistant state legal adviser ('ASLA') for the respondents argued that the learned judge erred in allowing the application for judicial review. Although twelve errors of law and fact were listed in the memorandum of appeal, we found that central to the complaint was that there was no basis for the learned trial judge to allow the judicial review.

[18] Learned ASLA submitted that the acquisition was done in accordance with the LAA 1960 and that the acquisition was not dependent on the zoning of the scheduled land and the EQA 1974. What needs to be adhered to, according to learned ASLA, was the LAA 1960 and in this respect relied on the cases of *Ahmad bin Saman v Kerajaan Negeri Kedah* [2003] 4 MLJ 705; [2004] 1 CLJ 211 and *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35. Learned ASLA further submitted that in any event, those two matters concerning zoning and environmental quality had been complied with.

[19] In respect of s 57 of the Act, learned ASLA submitted that it was within the discretion of the state authority to lease instead of to compulsorily acquire the scheduled land. This ground, contended learned ASLA, cannot form the basis to quash the acquisition of the land.

[20] In resisting the appeal, learned counsel for the applicant reiterated his position in the court below. Based on the grounds submitted in the High Court, learned counsel contended that the land acquisition and the decision-making of the acquisition were tainted with impropriety, illegality and irrationality, which rendered the acquisition of the land invalid. The learned High Court judge was thus correct in allowing the applicant's judicial review and in quashing the acquisition.

OUR FINDINGS

The zoning regulations/the EQA 1974

[21] We will take the first and the second issues together ie whether the purpose of acquisition contravenes the zoning and the EQA 1974, but before we move on to consider them, it is perhaps useful at this juncture to set out the oft-quoted authority on judicial review as set out in the case of *Council of Civil Service Unions and others v Minister for the Civil Service* [1985] AC 374 where at pp 410–411 Lord Diplock said:

> Judicial review has I think developed to a stage when without any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.
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> By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, those persons, the Judges, by whom the judicial power of the state is exercisable.
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> By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness (*Associated Provincial Picture Houses, Limited v Wednesbury Corporation* [1948] 1 KB 223). It applies to a decision so outrageous in its defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it.
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> I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred even where such failure does not involve any denial of natural justice.

[22] Coming back to the issues, to appreciate His Lordship's reasoning, we reproduce the relevant para in his grounds of judgment in respect of zoning where he stated:

24. Berdasarkan affidavit-affidavit yang difailkan, saya mendapati zoning tanah tersebut adalah zoning utiliti dan pertanian semasa pengambilan. Manakala tujuan pengambilan tanah terjadual adalah untuk pembesaran tempat pembuangan sampah. Pada tarikh warta dikeluarkan, saya bersetuju dengan pendapat peguamcara pemohon bahawa tanah terjadual tidak boleh digunakan sebagai tapak pelupusan sampah kerana zoningnya belum ditukar kepada zoning infrastruktur dan utiliti. Jika tanah terjadual digunakan sebagai tapak pelupusan, ianya akan melanggar zoning yang telah ditetapkan oleh responden pertama.

25. Saya memutuskan kegagalan responden-responden menukar zoning tersebut untuk membolehkan tanah terjadual digunakan sebagai tapak pelupusan sampah, jelas berlakunya penyalahgunaan dalam pengambilan tanah terjadual.

[23] Insofar as the EQA 1974 is concerned, His Lordship relied on ss 34A(2) and 34B(1) of the Act which respectively provide:

34A *Report on impact on environment resulting from prescribed activities*

(1) ...

(2) Any person intending to carry out any of the prescribed activities shall, before any approval for the carrying out of such activity is granted by the relevant approving authority, submit a report to the Director General. The report shall be in accordance with the guidelines prescribed by the Director General and shall contain an assessment of the impact such activity will have or is likely to have on the environment and the proposed measures that shall be undertaken to prevent, reduce or control the adverse impact on the environment.

34B *Prohibition against placing, deposit, etc, of scheduled wastes*

(1) No person shall —

(a) place, deposit or dispose of, or cause or permit to place, deposit or dispose of, except at prescribed premises only, any scheduled wastes on land or into Malaysian waters;

(b) receives or send, or cause or permit to be received or sent any scheduled wastes in or out of Malaysia; or

(c) transit or cause or permit the transit of the scheduled wastes, without any prior written approval of the Director General.

[24] Having considered the above provisions, the learned trial judge concluded as follows:

[28] Saya mendapati berdasarkan peruntukan undang-undang di atas, jika tanah terjadual akan digunakan sebagai tapak pelupusan sampah, ianya mesti mendapat kelulusan atau kebenaran daripada Ketua Pengarah Jabatan Alam Sekitar. Apa yang berlaku dalam kes ini bahawa kajian dan laporan masih berjalan dan kelulusan oleh Ketua Pengarah Jabatan Alam Sekitar belum diperolehi oleh pihak responden pertama untuk menggunakan tanah terjadual sebagai tapak pelupusan sampah. Rujuk eksh DLAR7 di perenggan 6 di mana Pengarah Jabatan Alam Sekitar telah

menyatakan:

> Sukacita dimaklumkan juga cadangan pembinaan tapak pelupusan sanitari adalah merupakan aktiviti yang memerlukan penyediaan Laporan EIA iaitu Environment Impact Assessment dan kelulusan daripada Jabatan Alam Sekitar dibawah Aktiviti 18b(iv) Perintah Kualiti Alam Sekeliling (Aktiviti Yang Ditetapkan) dan (Penilaian Kesan Kepada Alam Sekeliling) 1987 dimana Laporan Penilaian Kesan Kepada Alam Sekeliling Terperinci iaitu (Laporan Detailed EIA atau DEIA) perlu disediakan dan dikemukakan ke Jabatan Alam Sekitar Ibu Pejabat Putrajaya untuk tujuan penilaian dan pertimbangan selanjutnya selaras dengan keperluan Seksyen 34A (Akta Kualiti Alam Sekeliling 1974, dengan mengambilkira keperluan audit dan langkah kawalan yang sewajarnya terhadap cadangan pembangunan di atas.
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> [29] ... jikapun pihak responden pertama ingin mengambil tanah terjadul, ianya patut diwartakan selepas semua keperluan dibawah Undang-Undang Alam Sekitar telahpun dipatuhi.

[25] We found much force in the submission of learned ASLA that there was no breach as regards the zoning and requirements under the EQA 1974. The affidavit in reply of the second respondent states as follows (*rekod rayuan* (B): pp 82, 84–85):

> 10. ... tapak ini telah dizonkan, sebagai kawasan industri yang boleh digunakan sebagai kawasan infrastruktur (pelupusan sisa pepejal bagi tujuan pelupusan sisa sedia ada dan pembesarannya sahaja) yang telah diluluskan oleh Jawatankuasa Perancang Negeri di bawah Seksyen 4 Akta Perancang Bandar dan Desa 1976.
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> 11. ... melalui sepucuk surat dari Majlis Daerah Kuala Selangor ('MDKS') bertarikh 9hb April 2015 dialamatkan kepada Pejabat Daerah/Tanah Kuala Selangor, Responden Kedua telah menerima maklumat perancangan permohonan pengambilan tanah di bawah Seksyen 3(1)(a) dan Pengisytiharan di bawah Seksyen 8 Akta Pengambilan Tanah 1960 bagi tujuan tapak pelupusan sampah di atas sebahagian hak milik GRN 51664, Lot 1595, Mukim Jeram, Daerah Kuala Selangor. (selepas ini dirujuk sebagai 'pengambilan tanah tersebut'). Laporan MDKS tersebut menyebut bahawa kegunaan tanah bagi Lot tanah yang terlibat dalam pengambilan tanah tersebut adalah dizonkan sebagai kawasan tapak pelupusan sampah.
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> ...
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> 20. ... permohonan pengambilan tanah ini yang bertujuan untuk tapak pelupusan sampah telah mengambil kira dan mematuhi semua prosedur dan garis panduan berkenaan kawasan yang telah dizonkan untuk tujuan pengambilan tanah tersebut. Rancangan Tempatan Majlis Daerah Kuala Selangor 2025 telah menyatakan dengan jelas bahawa tapak ini telah dizonkan sebagai kawasan industri yang boleh digunakan sebagai kawasan infrastruktur (pelupusan sisa pepejal bagi tujuan pelupusan sisa sedia ada dan pembesarannya sahaja).

[26] Indeed the *Rancangan Tempatan Majlis Daerah Kuala Selangor 2025*

(*rekod rayuan Bahagian C/Jld* 1 at p 254) states:

> *G. Guna Tanah Infrastruktur dan Utiliti*
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> Guna tanah infrastruktur dan utiliti juga meningkat sebanyak 11%, iaitu daripada hanya 1,078.84 hektar pada tahun 2013 kepada 1,212.11 hektar pada tahun 2025. Cadangan utama infrastruktur dan utiliti ini adalah lebih menjurus kepada pembesaran tapak pelupusan sampah sediada yang dicadangkan di Jeram.

[27] The scheduled land, as mentioned earlier, is zoned partly as infrastructure and utilities and partly as agriculture. Although the landfill would fall under the industrial zone, we found no illegality in the decision-making by the respondents to acquire the scheduled land for purposes of expanding the landfill which was already in existence, which purpose was in accordance with the *Rancangan Tempatan Majlis Daerah Kuala Selangor 2025*. We therefore disagreed with the learned judge that there was 'penyalahgunaan' in the acquisition of the scheduled land.

[28] As for the requirements under the EQA 1974, we agreed with learned ASLA that the requirements would be relevant at the implementation stage whereas the decision to acquire and the acquisition itself is a policy matter. For convenience, we reproduce the argument of learned ASLA as follows:

> Adalah dihujahkan, proses pematuhan JAS dan DEIA adalah proses yang berterusan. Begitu juga dengan pematuhan kategori kegunaan tanah. Ia tidak relevan setakat keputusan dibuat untuk pengambilan tanah kerana ia pengambilan tanah adalah bersifat polisi, manakala pematuhan JAS dan DEIA dan kategori kegunaan tanah adalah bersifat pelaksanaan. Pematuhan hanya relevan setelah tanah diambil dan pelaksanaan hendak dijalankan. Contoh atau analogi yang mudah ialah: PBN meluluskan pengambilan tanah untuk membina sekolah. Sama ada rekabentuk sekolah mematuhi piawaian JKR, sesuai atau selamat adalah isu pelaksanaan. Ianya tidak menjadikan pengambilan tidak sah semata-mata disebabkan rekabentuk sekolah yang akan dibina tidak mematuhi piawaian JKR.

[29] More importantly, as highlighted by learned ASLA, there is nothing in the LAA 1960 that requires compliance with other laws before the acquisition of the land can be validly done. In *Ahmad Saman*, Arifin Zakaria JCA (as he then was) said at p 215:

> Thus, it would appear that the acquisition may be challenged on any of the following grounds:
>
> (a) that the acquiring authority has misconstrued its statutory powers;
>
> (b) that the purpose stated in the declaration does not come within s 3;
>
> (c) where it can be shown that the acquiring authority has acted in bad faith; or
>
> (d) where the acquiring authority has acted contrary to the law.

[30] His Lordship Arifin Zakaria made reference to *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang*, where Salleh Abas CJ (Malaya) (as he then was) said at p 37:

> We think it is sufficient to decide this appeal on the basis of a simpler question, ie whether or not in view of the long delay resulting in an injustice to the land owner the acquisition was done in accordance with the law (the Land Acquisition Act). Only in the circumstances that it is not done in accordance with the Act can we say that the acquisition is contrary to the requirement of cl (1) of art 13 of the Federal Constitution which requires that to be lawful every deprivation of property must be done in accordance with law.

[31] Guided by the above authorities, we accepted learned ASLA's submission that the challenge to the acquisition of the scheduled land on ground of illegality or 'contrary to law' should be confined to the law as provided under the LAA 1960.

[32] In the instant appeal, except for the ground that the respondents failed to issue Form A, (which ground the learned judge rejected premised on the decision of the Federal Court in *Pentadbir Tanah Alor Gajah & Anor v Ee Chong Pang & Ors* (No 01–13–06 of 2012(M) (unreported), which overruled the decision of this court in *Ee Chong Pang & Ors v The Land Administrator of the District of Alor Gajah & Anor* [2013] 2 MLJ 16; [2013] 3 CLJ 649), the applicant raised no other ground as regards the LAA 1960 itself.

[33] In the circumstances, we found that the learned judge erred in holding that the acquisition of the land was invalid.

Section 57 of the LAA 1960

[34] Section 57 reads:

> *57 Temporary occupation or use of the land*
>
> Whenever it appears to the state authority that the temporary occupation and use of any land is needed —
>
> (a) for any purpose specified in section 3; or
>
> (b) in order to carry out public works on any land,
>
> the state authority may direct the Land Administrator to procure the occupation or use of any such land for such term as he shall think fit, not exceeding three years from the date of commencement of such occupation or use, in the manner prescribed by this Part.

[35] In respect of the above provision, the learned judge held (*RRT*: p 26):

35. Saya mendapati keterangan yang dikemukakan oleh pihak Responden sendiri menunjukkan bahawa tujuan yang diwartakan bagi tanah terjadual hanyalah untuk tempoh yang agak pendek, lebih kurang 10 tahun. Saya menerima hujahan Peguam Pemohon sekiranya Responden Pertama ingin menggunakan tanah terjadual tersebut sebagai landfill, Responden Pertama bolehlah menyewa tanah terjadual daripada Pemohon untuk tempoh jangkamasa pendek iaitu 10 atau 15 tahun dan bukannya mengambil balik untuk selama-lamanya. Atas alasan itu, saya mendapati hujahan Penolong Penasihat Undang- Undang yang menghujahkan walaupun tapak pelupusan tersebut digunakan untuk tempoh 7 atau 10 tahun, ianya bukan bermaksud tapak tersebut akan digunakan secara sementara, adalah tidak bermerit.

[36] With respect, we were of the view that s 57 merely provides a discretion or an option to the state authority to occupy or use the land without resort to compulsory acquisition. As the discretion or the option lies with the state authority, its failure to invoke that provision in respect of the scheduled land cannot be a ground to quash the acquisition. In any event, s 57 would be applicable for occupation or usage of the land not exceeding three years, whereas in the instant appeal the landfill will operate between nine to ten years.

[37] Further, considering the purpose of the acquisition, it cannot be said that the respondents' decision to acquire the scheduled land was so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided, could have arrived at it. Consequently, we found that the decision to acquire the scheduled land did not suffer from irrationality.

CONCLUSION

[38] In the light of all the above, it was our judgment that the decision-making for the acquisition of the scheduled land did not suffer from illegality, irrationality or procedural impropriety which warrants judicial review by the learned High Court judge. We therefore allowed the appeal with no order as to costs.

Appeal allowed with no order as to costs.

Reported by Ashok Kumar